

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 537

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO PUBLIC RECORDS AND PUBLIC LANDS; PROVIDING LEGISLATIVE INTENT;
AND AMENDING SECTION 9-340D, IDAHO CODE, TO REVISE THE EXEMPTION FROM
DISCLOSURE FOR PROPERTY, TIMBER OR MINERAL RIGHTS THAT ARE ON PUBLIC
LANDS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to
provide transparency in all disposals of state endowment lands. Such dis-
posals include, but are not limited to, land exchanges. Section 9-340D(3),
Idaho Code, does not require the disclosure of appraisals and other informa-
tion pertaining to the disposal of state endowment lands until the disposal
transaction is complete. The Legislature finds and declares that waiting
until a disposal transaction has been completed to disclose such information
is contrary to the public interest, and contrary to the public policy of Sec-
tion 58-313A, Idaho Code, which requires the State Board of Land Commission-
ers to notify the county commissioners of the county in which state endowment
lands are located whenever they intend to sell such state endowment lands,
and which further provides that any objection said county commissioners may
have to such sale must be filed prior to the completion of the sales trans-
action. The Legislature further finds and declares that the public policy
inconsistency between Section 9-340D(3), Idaho Code, and Section 58-313A,
Idaho Code, should be rectified.

SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby
amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION
RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records
are exempt from disclosure:

(1) Trade secrets including those contained in response to public
agency or independent public body corporate and politic requests for pro-
posal, requests for clarification, requests for information and similar
requests. "Trade secrets" as used in this section means information, in-
cluding a formula, pattern, compilation, program, computer program, device,
method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not
being generally known to, and not being readily ascertainable by proper
means by other persons who can obtain economic value from its disclosure
or use; and

(b) Is the subject of efforts that are reasonable under the circum-
stances to maintain its secrecy.

(2) Production records, housing production, rental and financing
records, sale or purchase records, catch records, mortgage portfolio loan

1 documents, or similar business records of a private concern or enterprise
2 required by law to be submitted to or inspected by a public agency or sub-
3 mitted to or otherwise obtained by an independent public body corporate and
4 politic. Nothing in this subsection shall limit the use which can be made
5 of such information for regulatory purposes nor its admissibility in any
6 enforcement proceeding.

7 (3) Records relating to the appraisal of real property, timber or min-
8 eral rights prior to its acquisition, sale or lease by a public agency or
9 independent public body corporate and politic provided that this exemption
10 from disclosure shall not apply to endowment lands and rights or other lands
11 and rights offered in exchange for such endowment lands or rights.

12 (4) Any estimate prepared by a public agency or independent public body
13 corporate and politic that details the cost of a public project until such
14 time as disclosed or bids are opened, or upon award of the contract for con-
15 struction of the public project.

16 (5) Examination, operating or condition reports and all documents re-
17 lating thereto, prepared by or supplied to any public agency or independent
18 public body corporate and politic responsible for the regulation or supervi-
19 sion of financial institutions including, but not limited to, banks, savings
20 and loan associations, regulated lenders, business and industrial develop-
21 ment corporations, credit unions, and insurance companies, or for the regu-
22 lation or supervision of the issuance of securities.

23 (6) Records gathered by a local agency or the Idaho department of com-
24 merce, as described in chapter 47, title 67, Idaho Code, for the specific
25 purpose of assisting a person to locate, maintain, invest in, or expand busi-
26 ness operations in the state of Idaho.

27 (7) Shipping and marketing records of commodity commissions used to
28 evaluate marketing and advertising strategies and the names and addresses of
29 growers and shippers maintained by commodity commissions.

30 (8) Financial statements and business information and reports submit-
31 ted by a legal entity to a port district organized under title 70, Idaho Code,
32 in connection with a business agreement, or with a development proposal or
33 with a financing application for any industrial, manufacturing, or other
34 business activity within a port district.

35 (9) Names and addresses of seed companies, seed crop growers, seed crop
36 consignees, locations of seed crop fields, variety name and acreage by vari-
37 ety. Upon the request of the owner of the proprietary variety, this infor-
38 mation shall be released to the owner. Provided however, that if a seed crop
39 has been identified as diseased or has been otherwise identified by the Idaho
40 department of agriculture, other state departments of agriculture, or the
41 United States department of agriculture to represent a threat to that par-
42 ticular seed or commercial crop industry or to individual growers, infor-
43 mation as to test results, location, acreage involved and disease symptoms
44 of that particular seed crop, for that growing season, shall be available
45 for public inspection and copying. This exemption shall not supersede the
46 provisions of section 22-436, Idaho Code, nor shall this exemption apply to
47 information regarding specific property locations subject to an open burn-
48 ing of crop residue pursuant to section 39-114, Idaho Code, names of persons
49 responsible for the open burn, acreage and crop type to be burned, and time
50 frames for burning.

1 (10) Information obtained from books, records and accounts required in
2 chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed com-
3 mission and pertaining to the individual production records of oilseed grow-
4 ers.

5 (11) Records of any risk retention or self-insurance program prepared
6 in anticipation of litigation or for analysis of or settlement of potential
7 or actual money damage claims against a public entity and its employees or
8 against the industrial special indemnity fund except as otherwise discov-
9 erable under the Idaho or federal rules of civil procedure. These records
10 shall include, but are not limited to, claims evaluations, investigatory
11 records, computerized reports of losses, case reserves, internal documents
12 and correspondence relating thereto. At the time any claim is concluded,
13 only statistical data and actual amounts paid in settlement shall be deemed
14 a public record unless otherwise ordered to be sealed by a court of competent
15 jurisdiction. Provided however, nothing in this subsection is intended to
16 limit the attorney client privilege or attorney work product privilege oth-
17 erwise available to any public agency or independent public body corporate
18 and politic.

19 (12) Records of laboratory test results provided by or retained by the
20 Idaho food quality assurance laboratory. Nothing in this subsection shall
21 limit the use which can be made, or availability of such information if used,
22 for regulatory purposes or its admissibility in any enforcement proceeding.

23 (13) Reports required to be filed under chapter 13, title 62, Idaho
24 Code, identifying electrical or natural or manufactured gas consumption
25 data for an individual customer or account.

26 (14) Voluntarily prepared environmental audits, and voluntary disclo-
27 sures of information submitted on or before December 31, 1997, to an environ-
28 mental agency, which are claimed to be confidential business information.

29 (15) Computer programs developed or purchased by or for any public
30 agency or independent public body corporate and politic for its own use. As
31 used in this subsection, "computer program" means a series of instructions
32 or statements which permit the functioning of a computer system in a manner
33 designed to provide storage, retrieval and manipulation of data from the
34 computer system, and any associated documentation and source material that
35 explain how to operate the computer program. Computer program does not in-
36 clude:

37 (a) The original data including, but not limited to, numbers, text,
38 voice, graphics and images;

39 (b) Analysis, compilation and other manipulated forms of the original
40 data produced by use of the program; or

41 (c) The mathematical or statistical formulas that would be used if the
42 manipulated forms of the original data were to be produced manually.

43 (16) Active investigative records and trademark usage audits of the
44 Idaho potato commission specifically relating to the enforcement of chapter
45 12, title 22, Idaho Code, until the commencement of formal proceedings as
46 provided by rules of the commission; purchase and sales information sub-
47 mitted to the Idaho potato commission during a trademark usage audit, and
48 investigation or enforcement proceedings. Inactive investigatory records
49 shall be disclosed unless the disclosure would violate the standards set
50 forth in subsections (1) (a) through (f) of section 9-335, Idaho Code. Noth-

ing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4) (c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor, the state tax commission, a county board of equalization or the state board of tax appeals containing the following information: (i) lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and operating statements required to be filed pursuant to section 63-404, Idaho Code, and (ii) confidential commercial or financial information including trade secrets. Except with respect to lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and the operator statements required to be filed pursuant to section 63-404, Idaho Code, it shall be the responsibility of the taxpayer to give notice of its claim to exemption by stamping or marking each page or the first page of each portion of documents so claimed. No records

1 that are exempt pursuant to this subsection shall be disclosed without the
2 consent of the taxpayer except as follows:

3 (a) To any officer, employee or authorized representative of the state
4 or the United States, under a continuing claim of confidentiality, as
5 necessary to carry out the provisions of state or federal law or when
6 relevant to any proceeding thereunder.

7 (b) In the publication of statistics or reports as long as the statis-
8 tics or reports do not reasonably lead to the identification of the spe-
9 cific taxpayer or information submitted by taxpayers exempt pursuant to
10 this subsection.

11 (c) To the board of tax appeals or the district court as evidence or
12 otherwise in connection with an appeal of the taxpayer's property tax
13 assessment, but only if the board or the court, as applicable, has en-
14 tered a protective order specifying that the taxpayer information may
15 not be disclosed by any person conducting or participating in the action
16 or proceeding, except as authorized by the board or the court in accor-
17 dance with applicable law.

18 (d) Nothing in this subsection shall prevent disclosure of the follow-
19 ing information:

- 20 (i) Name and mailing address of the property owner;
- 21 (ii) A parcel number;
- 22 (iii) A legal description of real property;
- 23 (iv) The square footage and acreage of real property;
- 24 (v) The assessed value of taxable property;
- 25 (vi) The tax district and the tax rate; and
- 26 (vii) The total property tax assessed.

27 (25) Results of laboratory tests which have no known adverse impacts to
28 human health conducted by the Idaho state department of agriculture animal
29 health laboratory, related to diagnosis of animal diseases of individual an-
30 imals or herds, on samples submitted by veterinarians or animal owners un-
31 less:

32 (a) The laboratory test results indicate the presence of a state or fed-
33 erally reportable or regulated disease in animals;

34 (b) The release of the test results is required by state or federal law;
35 or

36 (c) The test result is identified as representing a threat to animal or
37 human health or to the livestock industry by the Idaho state department
38 of agriculture or the United States department of agriculture. Nothing
39 in this subsection shall limit the use which can be made, or availabil-
40 ity of such information if used, for regulatory purposes or its admis-
41 sibility in any enforcement proceeding, or the duty of any person to re-
42 port contagious or infectious diseases as required by state or federal
43 law.

44 (26) Results of laboratory tests conducted by the Idaho state depart-
45 ment of agriculture seed laboratory on samples submitted by seed producers
46 or seed companies. Nothing in this subsection shall limit the use which can
47 be made, or availability of such information pursuant to the provisions of
48 subsections (9) and (10) of section 22-418, Idaho Code.

49 (27) For policies that are owned by private persons, and not by a public
50 agency of the state of Idaho, records of policies, endorsements, affidavits

1 and any records that discuss policies, endorsements and affidavits that may
2 be required to be filed with or by a surplus line association pursuant to
3 chapter 12, title 41, Idaho Code.

4 (28) Individual financial statements of a postsecondary educational
5 institution or a proprietary school submitted to the state board of educa-
6 tion, its director or a representative thereof, for the purpose of regis-
7 tering the postsecondary educational institution or proprietary school pur-
8 suant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an
9 administrative rule of the board adopted pursuant to such sections.